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Supreme Court, U.S.
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No. 06-05

IN THE

Supreme Court of the United States

DOREL INDUSTRIES, INC.,

Petitioner,

v.

SUPERIOR COURT OF SANTA CLARA COUNTY, CALIFORNIA,

Respondent.

(Jonathan Jackson III, by and through his Guardian ad Litem, Jocelyn Sullivan, and Jocelyn Sullivan, Real Parties in Interest)

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, SIXTH DISTRICT

REPLY BRIEF

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STATEMENT PURSUANT TO RULE 29.6

Petitioner's corporate disclosure statement was set forth at page *ii* of its Petition for a Writ of Certiorari, and there are no amendments to that statement.

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This case presents a stark and important conflict between California and other courts. Under the banner of their "representative services doctrine," California courts will assert jurisdiction over a foreign parent corporation that lacks minimum contacts with the forum, by imputing to the parent the contacts of its subsidiary, so long as the subsidiary performs *any* service for the parent, *anywhere*, even if the service is unrelated to the forum or the dispute, and even if the subsidiary does not act as the parent's agent in the forum. Other courts reject this analysis, exercising jurisdiction over the parent only if the parent uses its subsidiary as its agent in the forum, since an agent's forum contacts are properly imputed to its principal. This conflict is critical because it throws into doubt corporations' commercial expectations when they invest in subsidiaries and observe separate corporate formalities. And the conflict is especially acute because of California's commercial prominence.

The Respondent, the California Superior Court, has not filed an opposition to the Petition. The Brief in Opposition ("Opp. Br."), filed by the Real Parties in Interest, tries to dodge the stark conflict, by first characterizing this case as one involving garden-variety agency, and then aligning it with the other courts that assert jurisdiction over a principal/parent based on the contacts of the agent/subsidiary. This attempt is a ruse. The California court whose decision is at issue expressly found that "*there is no basis for finding jurisdiction on an agency theory*" in this case. Petitioner's Appendix A, 14a (emphasis added). The California court exercised jurisdiction over the parent, Dorel Industries, despite having expressly found that the California contacts of the subsidiary, DJG, could *not* be imputed to the parent under an agency theory.

Rather than showing that the California court's decision accords with the decisions of other courts, the Real Parties in Interest argue that if DJG acted as Dorel Industries' agent in California (a position the California court *rejected*), then the exercise of jurisdiction would accord with the decisions of other courts. Essentially, they challenge the California court's no-agency ruling, and argue that a different ruling would not merit certiorari review. The decision the California court *did* make, however, *does* merit review: it presents a sharp legal conflict — whether a court may constitutionally exercise jurisdiction over a foreign parent whenever the parent's subsidiary is subject to jurisdiction there, as California holds, or whether this is true only when the subsidiary acts as the parent's agent in that jurisdiction, as other courts hold — of great commercial, constitutional, and international importance.

A. The Real Parties "Justify" the Decision Below Only by Challenging It.

The Real Parties assert that the court's exercise of personal jurisdiction over the parent, Dorel Industries, was "justified," by arguing at length that Dorel Industries acted in California through the agency of its subsidiary, DJG; that if the subsidiary did not perform these activities in California, the parent would have had to perform them itself; that the parent itself took sufficient actions in California to make jurisdiction over it reasonable; and that the parent held out the subsidiary's actions as its own. Opp. Br. 1-2, 4-9, 10-11.

These assertions are wrong. For example, contrary to the assertion that the booster seat at issue was "Petitioner's" (Opp. Br. 1), Dorel Industries has never designed, manufactured, or sold any child restraint in the United States;

has not itself manufactured a child restraint for 10 years or more; and only imports child restraints into Canada, for sale only in Canada, that are manufactured by DJG in Indiana to Canadian-only specifications.[1] Contrary to the assertion that DJG performs functions in California that Dorel Industries "would otherwise have to perform in the forum itself," and that Dorel Industries "delegated" its own California child restraint business to DJG (Opp. Br. 1, 11, 13), Dorel Industries has never had any United States child restraint business, and DJG's United States child restraint business is, and always has been, its own. Contrary to the assertion that Dorel Industries has its own sufficient contacts with California (Opp. Br. 2, 7), the asserted contacts (its guarantee of a lease for an unrelated warehouse in Orange County and choice of an Orange County forum for any dispute arising from the lease) are meaningless (because this dispute has nothing to do with the lease and was not filed in Orange County). Contrary to the assertion that Dorel Industries "regards its subsidiaries' activities as its own" (Opp. Br. 1, 7-8), the SEC filings to which the Real Parties point are just consolidated reports, as required by federal law, which expressly define "Dorel" as an umbrella term for Dorel Industries and its affiliates, for the benefit of lay investors seeking a general understanding of the collective activities reflected in the earnings reports. This is a typical corporate practice (*see Doe v. Unocal Corp.*, 248 F.3d 915, 927–28 (9th Cir. 2001)), and does not alter the entities' separate corporate status.

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1. Child restraints sold in the United States must conform to a different regulatory regime than restraints sold in Canada. *Compare* Canadian Motor Vehicle Safety Act, Schedule 3 (2002) *with* 49 C.F.R. 571.213 (2002).

More importantly, however, the Real Parties' agency arguments were rejected by the California court below, so its decision nevertheless to exercise jurisdiction cannot be "justified" on this basis. The court below reviewed the standards for agency and imputation of a subsidiary's actions to a parent, reviewed the record evidence in light of those agency standards (including the issues raised by the Real Parties in their current Brief in Opposition), and concluded that Dorel Industries and DJG were properly separate:

> [The] evidence [was] that DJG operated independently from DI . . ., that DI and DJG maintained separate corporate records and observed all corporate formalities, [and] that DI did not exercise day-to-day control over DJG's personnel, accounting, or management functions or its operational activities, including the design, manufacture, marketing and distribution of child car seats. Overall, the record does not support the conclusion that DI had taken over the day-to-day operations of DJG. Thus, there is no basis for finding jurisdiction on an agency theory.

Petitioner's Appendix A, 14a.

The Real Parties cannot legitimately say there is no conflict between the court below (which exercised jurisdiction over the foreign parent by imputing its subsidiary's California contacts, despite its finding of no agency relationship) and other courts (which exercise jurisdiction over such a parent only when agency exists). The Real Parties simply pretend that an agency relationship *did* exist here. There may be no conflict between this pretend decision and the decisions of other courts, but there is a

palpable and important conflict between the real decision below and the decisions of other courts.

B. A Real Conflict Exists.

The actual basis for the the California court's assertion of jurisdiction over Dorel Industries was its holding that the "representative services doctrine" supplied an independent basis for jurisdiction. It held that the doctrine applies whenever a subsidiary who is subject to personal jurisdiction in California performs any service for the parent (even unrelated to the dispute), anywhere (even outside California). It went so far as to hold that the parent is subject to jurisdiction wherever such a subsidiary is subject to jurisdiction, even when they properly observe corporate formalities and there is no reason to disregard their separateness.

The court below recognized an exception to this doctrine only for a parent that is purely a holding company, with no operating activity. It held that when the parent is a "passive investor," its subsidiary does not render a service the parent would otherwise perform itself, but when the parent also has operating activity, the subsidiary's services "assist[] the parent company," subjecting the parent to jurisdiction wherever the subsidiary has contacts. Petitioner's Appendix A, 16a-17a, 19a. The Real Parties embrace this distinction (Opp. Br. 12-13), but it makes no sense. Dorel Industries' status as an investor in DJG, which happens to conduct activity in California — concededly *not* a basis for Dorel Industries to be subject to jurisdiction in California — is not substantively changed just because it is also an operating

company with a non-California relationship to DJG (purchasing different goods with no California nexus whatsoever).[2]

The two legal distinctions articulated by the court below — the "representative services doctrine" as a principle of jurisdiction independent of agency, and the "passive investor" versus "operating company" distinction — are not recognized by other courts. Indeed, citing many of the same non-California cases as Dorel Industries, the Real Parties implicitly concede that these cases — which recognize jurisdiction over a nonresident when the nonresident wishes to conduct its own business in the forum State, and engages another person or company to act in its stead there — present the correct jurisdictional analysis. *See, e.g., Curtis Publishing Co. v. Cassel*, 302 F.2d 132, 137 (10th Cir. 1962); *Meier v. Sun Int'l Hotels, Ltd.*, 288 F.3d 1264, 1274–75 (11th Cir. 2002); *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88, 96 (2d Cir. 2000). *See also Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 479 n.22 (1985) (dictum that jurisdictional contacts may be "ascribed" to another party who is a "primary participant in the enterprise and has acted purposefully in directing those activities").

The California court below rejected the analysis underlying these cases. It refused to recognize the other courts' requirements that the activity (1) occur within, or be targeted toward, the forum State, and (2) implement the

2. Indeed, *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 418 (1984), held that a court cannot exercise general personal jurisdiction based on a nonresident's purchase of products unrelated to the dispute, even when the purchases were in the forum State.

business of the non-resident.[3] Other courts have applied these due process and agency principles to deny jurisdiction under facts materially indistinguishable from this case. *See Mylan Laboratories, Inc. v. Akzo, N.V.*, 2 F.3d 56, 63 (4th Cir. 1993) (subsidiary's criminal activities not attributed to non-resident parent, without evidence they were undertaken to benefit parent's business); *Digi-Tel Holdings, Inc. v. Proteq Telecommunications (PTE), Ltd.*, 89 F.3d 519, 524-25 (8th Cir. 1996) (parent's contacts not imputable to subsidiary, though both were involved in electronics business and both had been in contact with plaintiff about proposed business arrangements, because there was no evidence that the parent's forum contacts were undertaken on "behalf of" subsidiary, as required by *Burger King*, 89 F.3d at 524; parent's and subsidiary's products differed; and material contacts were not in or directed toward forum); *Religious Technology*

3. These two requirements are rooted in this Court's decisions. The first springs from the core principle that "a state court may exercise personal jurisdiction over a nonresident defendant only so long as there exist 'minimum contacts' between the defendant and the forum State." *World-Wide Volkswagen v. Woodson*, 444 U.S. 286, 291 (1980). The second springs from fundamental principles of personal jurisdiction and agency law. Due process allows the exercise of jurisdiction only "where the contacts proximately result from actions by the defendant *himself* that create a substantial connection with the forum State." *Burger King*, 471 U.S. at 475. "The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). Agency principles also hold that an agent employed for one purpose is not one's representative for the agent's own, separate activities. *International Shoe v. Washington*, 326 U.S. 310, 317 (1945). *See also Phoenix Canada Oil Co. v. Texaco, Inc.*, 842 F.2d 1466, 1477 (3d Cir. 1988) ("the arrangement must be relevant to the plaintiff's claim of wrongdoing.").

Center v. Liebreich, 339 F.3d 369, 374 (5th Cir. 2003) (in similar principal/agent context, no Texas jurisdiction over Florida estate unless estate's representative made continuous and systematic Texas "contacts in her representative capacity, on behalf of the Estate").

Under California's "representative services doctrine," these cases would have been decided differently: the plaintiffs could have brushed aside issues of state sovereignty and purposeful availment, and simply identified one act benefiting the non-resident defendant — committed anywhere in the United States by any affiliate subject to jurisdiction in California — to establish general personal jurisdiction over the non-resident. The conflict, calling for this Court's review, is sharp and important.

CONCLUSION

For the foregoing reasons, Petitioner Dorel Industries respectfully requests the Court to accept review.

Respectfully submitted,

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